IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated:- 25.10.2006

Coram:-

The Hon'ble Mr. Justice P.SATHASIVAM
and
The Hon'ble Mr. Justice S.TAMILVANAN

Habeas Corpus Petition No.881 of 2006

Arunachalam ... Petitione

Vs.

1.The State of Tamil Nadu,
Rep. by its Secretary to Government,
Department of Prohibition and Excise ,
Fort St.George Chennai-9.

2.The District Magistrate and
District Collector,
Cuddalore District, Cuddalore. ... Respondents

Petition under Article 226 of the Constitution of India for th issuance of a Writ of Habeas Corpus to call for the records i C4/Do.6/2006 dated 4.8.2006 on the file of the second respondent herei and quash the same as illegal and direct the respondents to produce th detenu Anbu Gandhi, S/o Jayapal before this Court, set him at liberty.

For Petitioner : Mr.K.Balakrishnan
For Respondents : Mr.M.Babu Muthu Meeran
Addl. Public Prosecutor

O R D E R

(Order of the Court was made by P.SATHASIVAM,J.)

The petitioner, who is the friend of the detenu, by name Anb Gandhi, who is detained as a ''Goonda" as contemplated under the Tami Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders Forest Offenders, Goondas, Immoral Traffic Offenders, Slum Grabbers an Video Pirates Act, 1982 (Tamil Nadu Act 14 of 1982), by the impugne detention order dated 04.08.2006, challenges the same in this Petition

2. Heard learned counsel for the petitioner as well as learne Additional Public Prosecutor for the respondents.

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3. At the foremost, the learned counsel for the petitioner b drawing our attention to the averments made in paragraph No.5 of th grounds of detention submitted that, the detention order is liable t be quashed on the ground of non-application of mind on the part of th detaining authority.

4. While elaborating the above submission, the learned counse appearing for the petitioner has brought to our notice that thoug the detaining authority has noted that the detenu viz., Anbugandhi ha filed a bail application before the Court of Principal Sessions Judge Cuddalore, in Crl.M.P.No.3076/2006 and the same was dismissed o 04.07.2006 and again he filed a bail application before the High Court Chennai in Crl.O.P.No.19569/2006 on 24.07.2006 and the same i pending, he has arrived at a conclusion mechanically that "... howeve there is real possibility of his coming out on bail by filing bai application for the above case since in similar cases bails ar granted by the concerned Court or Higher Courts after lapse of time .. ". As rightly pointed out by the learned counsel for the petitioner the detaining authority, having found that the bail application file by the detenu is pending before the High Court, Chennai i Crl.O.P.No.19569 of 2006, has arrived at a conclusion that it would b possible for the detenu to come out on bail by filing bail applicatio before the concerned Court or higher Courts, which amply shows his no application of mind in arriving imminent possibility of the deten being coming out on bail. It is not in dispute that when the bai application filed earlier is still pending, unless the said petition i dismissed, the detenu cannot move another bail application. We ar satisfied that the conclusion arrived at by the detaining authorit cannot be sustained and the detention order is liable to be quashed o the ground of non application of mind and accordingly, the same i quashed.

5. Accordingly, the Habeas Corpus Petition is allowed and th impugned order of detention is set aside. The detenu is directed t be set at liberty forthwith from the custody unless he is required i connection with some other case or cause.

gms

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1.The Secretary to Government,
Department of Prohibition and Excise ,
Fort St.George Chennai-9.

2.The District Magistrate and District Collector,
Cuddalore District, Cuddalore.

3. The Superintendent, Central Prison, Cuddalore.

4. The Joint Secretary to Government, Public (Law and Order)
Fort St. George, Chennai-9.

5. The Public Prosecutor, High Court, Madras.

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